

Ruby's Death

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Verdict

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Reversed

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Court in Texas Orders Retrial Outside Dallas

Police Testimony Admitted in Error, Panel Decides

AUSTIN, Tex. (AP) — The Texas Court of Criminal Appeals reversed today the death-penalty conviction of Jack Ruby for the murder of Lee Harvey Oswald. Oswald was identified by the Warren Commission as President Kennedy's assassin.

The state's highest court for criminal cases sent the case back for retrial in some other county than Dallas, where it originally was tried.

The three-man court held that the trial court erred in admitting as evidence testimony by police officers of conversations with Ruby shortly after the killing.

Conversation Related

A policeman testified that Ruby told him he had seen Oswald in a police lineup and that when he saw the expression on Oswald's face he decided he would kill Oswald if he got the chance.

"Obviously, this statement constituted an oral confession of premeditation made while in police custody and therefore was not admissible. The admission of this testimony was clearly injurious and calls for reversal of this conviction," the opinion said.

Ruby was convicted in March, 1964, for the slaying, which was nationally televised. An estimated 140 million viewers saw Ruby gun down Oswald Nov. 24, 1963, as Oswald was being taken from the Dallas City Jail to the Dallas County Jail.

The court's order by presiding Judge W. A. Morrison said that the reversal on grounds of the inadmissible testimony made it unnecessary to discuss in detail "the error of the court in failing to grant (Ruby's) change in venue."

Rehearing Motion Planned

In Dallas, Dist. Atty. Henry Wade, who led prosecution in the Ruby trial, said, "We don't think there was an error. We will file a motion for rehearing



This is the act for which Jack Ruby went on trial for his life in Dallas. He is shown firing point blank at Lee Harvey Oswald in 1963. Millions saw the slaying on television. Today, Ruby's death verdict was overturned by the Texas Court of Criminal Appeals.



—Associated Press

Ruby displays varied emotions during his Dallas trial.

in that court down there (the Court of Criminal Appeals) within two weeks and hope to get them to change their opinion. This is not final yet."

Asked what role he would play in prosecution if the trial moves to a new county, Wade replied, "It will depend on where it's moved. Wherever it's moved, it depends on the attorney there. If he needs us to help him, we will, of course."

In Detroit, Sol Dann, one of five attorneys who argued Ruby's case before the Court of Criminal Appeals last June, said:

"I'm naturally very pleased that the Texas Court of Appeals followed the law of Texas and protected the legal rights of Jack Ruby, which were violated during the trial. . . .

"The maximum penalty under Texas law for murder without malice and premeditation is only five years. The jury was not justified in returning the death verdict."

The appeals opinion said recent decisions by the U.S. Supreme Court in the cases of Billie Sol Estes and Dr. Samuel Sheppard, as well as the record in the Ruby trial, make it "abundantly clear" that the trial court "reversibly erred in refusing (Ruby's) motion for a

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change in venue" (to a trial site other than Dallas).

Estes' state conviction for fraud was reversed and a new trial ordered. He is in prison on a 15-year federal conviction for the same sort of fraud—selling fertilizer tank mortgages when the tanks did not exist.

Press Coverage Cited

In the Sheppard case the U.S. Supreme Court reversed the Cleveland osteopath's murder conviction on grounds that extensive newspaper coverage had created such climate of opinion that he was denied a fair trial. The high court reversal of the Estes case concerned television coverage.

"For the errors pointed out, the judgment is reversed, and the cause is remanded with directions that venue (the trial site) be changed to some county other than Dallas," the court's order said.

Compared to the voluminous record and appeal briefs in the

case, Morrison's opinion for the court was dramatically short—three pages.

Judge W. T. McDonald, who lost a re-election campaign this spring and goes out of office in January, entered a concurring opinion based on the refusal of Trial Judge Joe B. Brown to move the trial elsewhere.

City on Trial

"The writer feels it fair to assume that the citizenry of Dallas consciously and subconsciously felt that Dallas was on trial and the Dallas image was uppermost in their minds to such an extent that Ruby could not be tried there fairly while the state, nation and world judged Dallas for the tragic November events," McDonald's opinion said.

Phil Burleson, a Dallas lawyer who has remained on Ruby's defense team from the very first, said of the decision:

"I'm tickled pink. I'm extremely excited and pleased at the action of the court."

He went to the county courthouse to tell Ruby.

He said Ruby's sister, Mrs. Eva Grant of Dallas, was equally delighted when he told her the news. "She nearly fainted with glee and happiness," Burleson said. "She was extremely pleased. She was very, very happy."

Cites Court's Order

Burleson said that when he helped write the motion for a new trial, his request for change of venue "had no criticism of Dallas as such."

He explained that the order for new trial in another city "is what the court ordered, and we don't second-guess courts. The circumstances in Dallas at the time of the first trial were such that Jack could not get a fair trial."

The Dallas lawyer seemed most pleased that the reversal came on the trial court's acceptance of testimony from the police officers.

"That trial court erred in admitting it," Burleson said. "I argued in that trial that the evidence showed it to be a murder-without-malice case."

Burleson added, "I still think it's a murder without malice case, and that this is, in effect, what the court has said."

Not Sure of Defense Team

The Dallas attorney said he is not sure yet who will serve on the defense team for a new trial, but he expressed doubt that the

appeals court would withdraw its ruling on Wade's motion asking that the court reconsider. Of that motion, he said the court "will not keep it too long, unless they change it around—which they seldom do." Burleson said he could go to trial

immediately, if that were necessary.

The defense relied strongly on a recent U.S. Supreme Court decision overturning the conviction of Dr. Sheppard for the murder of his wife. Sheppard won a new trial because, the court said, excessive newspaper publicity inflamed Cleveland against him.

The state pointed out in its supplemental brief that defense attorneys should have asked for a continuance—as Sheppard repeatedly did, in vain—if they thought Dallas had been inflamed against Ruby. The state brief was written by Dallas Assistant Dist. Atty. James M. Williamson. Williamson also defended Judge Brown's denial of a change of venue. Such matters are in the judge's discretion, the brief said.

Publicity Elsewhere

"There is no showing in this record that, to the extent such publicity might be prejudicial to Ruby in Dallas County, such identical or similar publicity in all other counties of Texas was not equally as prejudicial," said Williamson's brief.

The defense attorneys "had good grounds for believing that pre-trial publicity considered in its 'totality' was favorable to Ruby," the state brief said, adding that Ruby's attorneys wanted a speedy trial to take advantage of the "emotional feeling accruing in connection with President Kennedy's assassination. . . ."

The defense also contended that 11 of the 12 jurors were witnesses to the crime because they saw it on television. Witnesses to a crime cannot serve as jurors in a case involving that crime.

"The question is then posed," Burleson said in a supplemental brief, "that if the television film of the shooting was not material, as the state claims, then why did the state offer into evidence the very same television film during the trial for the jury's

consideration?"

TV Viewing Pointed Out

McDonald said that the fact that thousands of persons in Dallas county saw on television Ruby shoot Oswald "alone precluded Ruby from receiving a fair and impartial trial by a Dallas County jury."

Judge K. K. Woodley also filed a separate concurring opinion disagreeing with McDonald's view that jurors who witnessed the shooting on television should have been disqualified. He stated that "it should also be clearly understood that the (court) majority does not hold" to McDonald's view.

The court order, by Morrison, noted that Joe B. Brown Sr., the Dallas district judge, has removed himself "from any further connection with the case, and, we have concluded, properly so."

Ruby's appeal to the Court of Criminal Appeals was delayed by several hearings, at one of which Ruby was adjudged sane both at the time of the hearing and at the time Oswald was shot.

A writ of habeas corpus also was sought on the grounds that the trial judge allegedly decided while he still had jurisdiction of the case to write a book about the trial.

Joe Tonahill of Jasper, Tex., one of Ruby's original team of lawyers, said the opinion reduced Ruby's case to murder without malice and he could go free on a guilty plea, apparently meaning Ruby had served nearly three years in jail.

"This takes away the state's evidence on premeditation and malice," Tonahill said. "Without that they can't get a murder with malice conviction."

The punishment for murder without malice is two to five years imprisonment.